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**IN THE
COURT OF APPEALS OF INDIANA**

JAMES T. FERGUSON, on behalf of)
DEPENDABLE SANDBLAST & DEBURRING)
CORPORATION, and Individually,)
)
Appellant-Plaintiff,)

vs.)

No. 49A05-0607-CV-352

CHARLES D. CANDLER, KENNETH J.)
CANDLER, CK ENTERPRISES, and)
DEPENDABLE SANDBLAST & DEBURRING)
CORPORATION,)
)
Appellees-Defendants.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Reuben B. Hill, Special Judge
Cause No. 49D10-0103-CP-429

June 8, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-plaintiff James T. Ferguson appeals the trial court's order that partially disposes of his complaint against appellees-defendants Charles D. Candler, Kenneth J. Candler, CK Enterprises (CK), and Dependable Sandblast & Deburring Corporation (Dependable). We conclude that the trial court's order is deficient, inasmuch as it contains miniscule findings of fact and neglects to dispose of a number of the claims in the complaint and counterclaim. Consequently, we remand this matter to the trial court with instructions to enter a more detailed order that disposes of all matters raised by the parties' pleadings.

FACTS

In the early 1980s, the Candlers were employees of DeBurr & Supply, Inc. (DeBurr), an Indianapolis sandblasting company. Ferguson, who has owned an excavating business at all relevant times, was a customer of DeBurr at that time.

The Candlers and Ferguson decided to purchase DeBurr. To effect that transaction, they formed Dependable, which is a closely-held Indiana corporation that is in the business of providing sandblasting¹ and deburring² services. The three men were the corporation's only directors, shareholders, and officers. Charles, Dependable's President, owned 40% of the shares; Kenneth, Dependable's Secretary, owned 20% of the shares; and Ferguson, Dependable's Vice President, owned 40% of the shares. Charles was responsible for

¹ Sandblasting is "a process that cleans stone or metal surfaces with a high-pressure velocity blast of air-carrying sand." Appellant's Br. p. 6.

² Deburring is a process that smoothes out the rough edges of a surface or object. See Intervale Steel Corp. v. Borg & Beck Div., Borg-Warner Corp., 578 F. Supp. 1081, 1084 (E.D. Mich. 1984).

Dependable's daily operations. He set prices without involvement from Ferguson and wrote the majority of the business's checks.

In January 1983, Dependable purchased DeBurr. Dependable did not, however, purchase the real estate on which DeBurr was located. Instead, Dependable leased the real estate for two years from a person formerly affiliated with DeBurr. The one-page, handwritten, undated lease was signed by Charles for Dependable and was to expire on September 25, 1984. The lease gave Dependable the first option to purchase the real estate upon the lease's expiration.

In February 1983, however, Ferguson personally purchased the real estate. Ferguson insists that he purchased the real estate because he and the Candlers had learned that there were a number of creditors who held liens on the real estate. Thus, fearing that Dependable could lose its lease if the real estate were sold at a judicial sale, Ferguson purchased the property to secure Dependable's interest. The parties dispute whether the Candlers knew that Ferguson was planning on purchasing the property before he did so. Whereas Ferguson testified that the Candlers were aware of his plan and approved of the purchase because they were unable to purchase the property as a corporation, Charles testified that he did not know of Ferguson's intention until after he purchased the real estate. Charles admitted that he thought that it was a "good thing" that Ferguson owned the real estate, and the Candlers did not object to the purchase at the time. Tr. p. 436.

As landlord, Ferguson charged the same monthly rent payment—\$460—as provided for by the original lease until that lease expired. At that time, Ferguson entered into a month-

to-month oral lease with Dependable, slowly raising the monthly rent over time until it reached a monthly high of \$2250 in 1996. The Candler's claim that they were essentially hostages to Ferguson because he retained the right to increase Dependable's rent—or evict Dependable altogether—if the Candler's refused to comply with Ferguson's wishes. The Candler's, whom an accountant concluded were “grossly underpaid,” tr. p. 391, received a small salary from Dependable, but Ferguson—who did little or no work for the company—did not. When the Candler's insisted on raises, Ferguson merely raised the monthly rent in response to compensate himself equally.

In the course of business, Dependable generated large amounts of spent sandblasting sand. Initially, Ferguson and the Candler's merely pushed the sand into a nearby lake until 1989, when they learned that disposing of the sand in that way caused environmental problems. In 1991, Ferguson built a silt fence and holding pond to prevent sand from spilling into the lake. Ferguson claims that after he cleaned up the sand, the Candler's continued to build up piles of the sand, which they neglected to clean up even after ordered to by the trial court.

In November 1990, Charles and Kenneth entered into a partnership, CK, which they kept secret from Ferguson. Martinsville Industries (Martinsville), one of Dependable's customers, refurbished expansion wheels for the Indianapolis Water Company (IWC). Martinsville subcontracted its sandblasting work for IWC to Dependable. Martinsville eventually amassed a debt of over \$8000 to Dependable, and Martinsville's owner reached an agreement with Charles that the Candler's would take over Martinsville's business and make

periodic payments to Martinsville's owner, who would repay the debt to Dependable. The Candler, therefore, formed CK for the purpose of performing services for IWC that had previously been performed by Martinsville and Dependable. Charles admitted that he "did try to keep [CK] secret" from Ferguson. Id. at 568. CK was a profitable venture, generating nearly \$250,000 from its lone customer—IWC. CK never made any payments to Dependable.

On March 19, 2001, Ferguson filed a complaint against the Candler, Dependable, and CK, requesting damages and injunctive relief. The complaint included the following counts:

- Breach of fiduciary duty against the Candler as directors and officers of Dependable
- Breach of fiduciary duty against the Candler as shareholders of Dependable
- Civil conspiracy against the Candler and CK
- Violation of Indiana Trade Secrets Act against the Candler and CK
- Intentional interference with prospective business relationships against the Candler and CK
- Unfair competition against the Candler and CK
- Constructive fraud against the Candler
- Punitive damages request based on breach of fiduciary duties and conspiracy against the Candler and CK
- Theft and conversion against the Candler and CK
- Receipt of stolen property against the Candler and CK
- Criminal mischief against the Candler and CK
- Unjust enrichment against the Candler and CK
- Trespass against the Candler and CK
- "Environmental legal action" against Dependable, the Candler as directors and officers of Dependable, and CK, appellant's app. p. 50
- Trespass against Dependable
- Trespass against the Candler and CK³

On March 22, 2001, Ferguson terminated the lease with Dependable.

³ On April 24, 2002, Ferguson added a count for ejectment and immediate possession.

On August 30, 2001, Ferguson sued Dependable in small claims court because Dependable had continued to occupy the premises after the expiration of the lease on April 30, 2001, and had not paid rent since that time. On October 22, 2001, the small claims court entered an order finding that Ferguson was entitled to possess the real estate and issued a writ of possession ordering the sheriff to put him in possession of the real estate by noon on October 31, 2001. The writ expired on November 21, 2001.

The parties attempted to resolve their dispute. To that end, Dependable agreed to continue freezing certain corporate assets and to pay monthly rent in exchange for Ferguson's agreement not to enforce the writ of possession. Ferguson accepted monthly rent checks from Dependable for November 2001 through March 2002.

Four months later, the parties had still not reached a settlement. Notwithstanding the fact that Dependable's March rent was paid in full, on the night of March 6, 2002, Ferguson took possession of the real estate by changing the locks on the doors and moving a trailer in front of the driveway. He took Dependable's checkbook and cash box to "safeguard" the items. Appellant's Br. p. 12. Ferguson, who was a signatory on the checking account and authorized to write checks, wrote a check to himself for \$10,600 as his forty-percent share of the funds. On March 7, 2002, the Candlers entered the real estate by climbing the fence and proceeded to break several doors and windows of the Dependable office. Ferguson alleges that the property damage totaled \$10,866.63.

On March 13, 2002, Dependable obtained an emergency temporary restraining order prohibiting Ferguson from interfering with the operations, accounts, customers, or employees

of Dependable. On March 22, 2002, following a hearing, the trial court granted a preliminary injunction barring Ferguson from evicting Dependable from the property. Ferguson appealed the temporary restraining order and preliminary injunction. On January 17, 2003, in an unpublished memorandum decision, we affirmed the trial court's judgment, finding, among other things, that the writ of possession had expired and, consequently, the small claims court no longer had jurisdiction over the case. Ferguson v. Candler, No. 49A04-0206-CV-265 (Ind. Ct. App. Jan. 17, 2003).

On September 29, 2003, the trial court granted summary judgment for Ferguson on his ejectment claim and ordered the Candlers and Dependable to "clean[] up in a professional manner all spent sand, debris, and waste" on the real estate by October 1, 2003, and to vacate the premises by October 15, 2003. Appellant's App. p. 188. On October 15, 2003, Dependable vacated the premises and took possession of its new leased location, which was about four blocks away from Ferguson's property. Ferguson alleges that after the Candlers vacated the property, he discovered that the real estate had not been cleaned up and that part of it was contaminated with hazardous waste.

On June 6, 2002, the Candlers and Dependable had filed a counterclaim against Ferguson, alleging breach of fiduciary duty, theft/conversion, criminal mischief, invasion of privacy, and abuse of process. On July 27, 2002, the trial court dismissed the counts alleging unfair competition and requesting punitive damages from Ferguson's complaint.

On January 25, 2005, the trial court issued a pretrial order in which, among other things, it observed that "findings of fact and conclusions of law were discussed" and

indicated that it would “make written findings of fact and conclusions of law” and would “require the parties to submit proposed findings of fact and conclusions of law after the trial.” Appellant’s App. p. 190.

Prior to the commencement of trial, the Candlers moved for summary dismissal of the counts of Ferguson’s complaint alleging civil conspiracy, unfair competition, constructive fraud, trespass, environmental issues, and contamination. Ferguson moved for the dismissal of portions of the counterclaim and withdrew his count alleging violations of the trade secrets act. The trial court took the pretrial motions under advisement and never expressly ruled on them.

A three-day trial began on February 8, 2005. On June 20, 2005, following the trial’s conclusion, the parties submitted proposed findings of fact and conclusions of law totaling over 70 pages. On March 22, 2006, the trial court issued a four-page order containing limited findings and conclusions. The order reads, in pertinent part, as follows:

12. The Court concludes that [Ferguson] failed to prove by a preponderance of the evidence that [the Candlers] caused environmental damage.

13. The sum of \$10,800.00 [sic] removed from the account of [Dependable] by [Ferguson] was removed in error and should be returned to [Dependable].

14. The efforts and labor of [the Candlers] created the only value in [Dependable].

15. To the extent [the Candlers] are no longer affiliated with [Dependable] it has no future value.

17. All individual parties herein have, to the same extent, breached their fiduciary duty to their fellow shareholders.

Id. at 24. The trial court then ordered the remaining funds in Dependable's bank account to be distributed to the parties according to their ownership interest in the company. It also ordered Ferguson to return \$10,600 to Dependable, representing the amount of the check he had written to himself from Dependable's account in March 2002. Ferguson now appeals.

DISCUSSION AND DECISION

Initially, we observe that the trial court indicated to the parties in its pretrial order that it would enter findings of fact and conclusions of law. Having so promised, the trial court was bound to follow through. A trial court is not required to enter detailed findings of fact and conclusions of law pursuant to Indiana Trial Rule 52(A) unless requested to by one of the parties. But where, as here, the trial court indicates that it intends to enter findings of fact and conclusions of law and accepts proposed findings and conclusions from the parties, the parties are entitled to rely on that representation and need not make an additional, repetitive request for findings and conclusions.

After trial, the parties submitted a combined 75 pages of proposed findings and conclusions. Notwithstanding those events and the fact that the trial court took nearly a year to enter its order after the submission of the proposed findings and conclusions, the trial court here entered a barely-four-page order disposing only partially of the case.

The trial court neglected to rule explicitly on, by our calculation, eleven counts of Ferguson's complaint and four counts of the counterclaim. It also neglected to rule on the parties' respective motions for summary dismissal that it took under advisement pending

trial. Thus, the conclusions of law are insufficient to dispose of all matters herein. Moreover, the extraordinarily limited findings of fact do not provide a sufficient basis for us, in our capacity as a reviewing court, to draw legal conclusions therefrom. Similarly, the limited findings of fact do not support the limited conclusions reached by the trial court.

Under these circumstances, we are compelled to remand this matter to the trial court with instructions to enter detailed findings of fact and conclusions of law on all matters before it. We also observe that both parties have requested damages pursuant to multiple counts in the complaint and counterclaim and that, notwithstanding the fact that the trial court found that Ferguson and the Candlers each breached fiduciary duties, the trial court was entirely silent on the matter of damages stemming from those breaches or any other malfeasance. The trial court must at least address the damages requests even if it ultimately concludes that no damages are warranted.

The judgment of the trial court is remanded with instructions to enter detailed findings of fact and conclusions of law on all matters raised by the parties' pleadings.

FRIEDLANDER, J., and CRONE, J., concur.